02-0849 V.V.W. v. City Market Issued: 7/29/05

V. V. W. asks the Utah Labor Commission to review Administrative Law Judge Lima's decision regarding Mr. W.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. W. injured his back while working for City Market on October 25, 2001. City Market accepted liability for the injury, but rejected Mr. W.'s request for surgery. Mr. W. went ahead with the surgery. The surgery proved to be unnecessary.

Judge Lima concluded that, because the surgery was unnecessary, City Market is not liable for either the cost of the surgery or associated disability benefits. In his motion for review of Judge Lima's decision, Mr. W. contends he was entitled to rely on his surgeon's opinion that the surgery was warranted and, therefore, is entitled to payment of surgery costs and related disability compensation under the workers' compensation system.

FINDINGS OF FACT

Mr. W. injured his back while working for City Market on October 21, 2001. On May 27, 2002, he filed an application for hearing with the Labor Commission to compel City Market to pay various workers' compensation benefits related to his back injury, including the cost of anticipated future back surgery.

On September 4, 2002, City Market filed its answer to Mr. W.'s application. City Market admitted Mr. W. had injured his back at work and that City Market was liable for workers' compensation benefits due Mr. W. as a result of that accident.[1] However, City Market specifically denied that surgery was required to treat the back injury. City Market's position was supported by the opinions of several doctors who had examined or treated Mr. W..

Disregarding the various medical opinions against surgery, and while City Market's objections to surgery were pending before the Commission, Mr. W. chose to undergo back surgery on October 8, 2002.

On September 2, 2003, the parties waived their right to an evidentiary hearing in this matter and instead submitted stipulated facts to Judge Lima. The parties also stipulated that "there is a medical dispute requiring a medical panel evaluation on whether [Mr. W.] should have proceeded to surgery." In accord with the parties' stipulation, Judge Lima appointed an impartial panel of medical experts to consider whether Mr. W.'s back surgery of October 8, 2002, was necessary to treat his work injury.

The medical panel concluded that Mr. W.'s surgery was not necessary. On that basis, Judge Lima ruled that City Market was not liable for the expense of the surgery or for any additional disability Mr. W. may have incurred as a result of the surgery.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401(1) of the Utah Workers' Compensation Act provides that an employee injured in a work-related accident shall be paid disability compensation and medical expenses "in the amount provided by this chapter." Here, there is no dispute that Mr. W. accidentally injured his back while working for City Market and that City Market is liable for the benefits provided by the Act. What is in dispute is whether, under the facts of this case, City Market is liable for the cost of unnecessary surgery and additional disability compensation arising from the unnecessary surgery.

In considering this question, the Commission recognizes that an injured worker is entitled to payment of medical expenses incurred in reasonable reliance on a physician's recommendations for treatment of a work injury. See Gunnison Sugar Co. v. Industrial Commission, 275 P. 777 (Utah 1929). In *Larson's Workers' Compensation Law*, §10.09(1), Professor Larson states essentially the same rule: "It is now uniformly held that aggravation of the primary injury by medical or surgical treatment is compensable. Examples include exacerbation of the claimant's condition . . . from . . . corrective or exploratory surgery." At §10.09(2), Professor Larson further observes that "(f)ault on the part of the physician, such as faulty diagnosis [or] excessive surgery . . . does not break the chain of causation."

However, the foregoing principle is predicated on the injured worker's *reasonable reliance* on recommendations for treatment. In this case, City Market notified Mr. W. it would not accept liability for his back surgery because the surgery was unnecessary. City Market's position was supported by the opinions of several medical experts who had treated or examined Mr. W.. Furthermore, Mr. W. could have obtained a ruling from the Commission on the necessity of surgery before proceeding. Instead, Mr. W. elected to undergo the surgery without his employer's consent or approval of the Commission. It has now been established that the surgery was unnecessary.

The Utah Workers' Compensation Act's provisions for payment of medical expenses are found in § 34A-2-418(1): ". . . [T]he employer or the insurance carrier shall pay reasonable sums for medical . . . services . . . **necessary** to treat the injured employee." (Emphasis added.) Thus, by its plain language, the Act does not require employers and their insurers to pay all medical costs incurred by an injured worker. Instead, the Act only requires payment for necessary medical care. The Commission recognizes that, consistent with the spirit and intent of the Act, this requirement of "necessity" should be broadly interpreted in favor of the injured worker. But at the same time, the word "necessary" in § 34A-2-418(1) is a statutory limitation to employer/insurance carrier liability. Otherwise, an injured worker would be free from any constraints in obtaining medical care and the employer/insurer would have no recourse but to pay for such care, necessary or not.

Mr. W.'s surgery was not necessary to treat his work injury. Furthermore, Mr. W. knew in advance of the surgery that his employer had declined liability based on the opinions of medical experts. By proceeding with surgery under these circumstances, without first obtaining a ruling from the Commission, Mr. W. assumed the risk that the surgery would ultimately be found

unnecessary. Under these circumstances, the Commission concludes that City Market has no obligation to pay for the surgery.

The Commission notes that Mr. W. is also claiming additional compensation for disability resulting from the unnecessary surgery. However, §34A-2-401(1)(a) only requires payment of "compensation for loss sustained on account of the [work-related] injury." Here, the additional disability compensation Mr. W. seeks was not sustained on account of his work-related injury, but because of his own action in proceeding with unnecessary surgery. Under these circumstances, the Commission concludes that City Market is not liable for additional compensation attributable to the unnecessary surgery.

ORDER

The Commission affirms Judge Lima's decision and denies Mr. W.'s motion for review. It is so ordered.

Dated this 21st day of July, 2005.

R. Lee Ellertson, Commissioner

1. At the time City Market filed its answer, it had already paid more than $24,000 in medical and disability benefits on behalf of Mr. W.